UNITED STATES PATENT AND TRADEMARK OFFICE

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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

	Application No.	Applicant(s)
Office Action Summary	09/733,215	PRASAD ET AL.
	Examiner	Art Unit	
	Natalie A. Pass	3626	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE *3* MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *26 June 2008*.

2a)☐ This action is **FINAL**. 2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *34-50* is/are pending in the application.

    4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *34-50* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

    Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

    Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

    a)☐ All b)☐ Some * c)☐ None of:

      1.☐ Certified copies of the priority documents have been received.

      2.☐ Certified copies of the priority documents have been received in Application No. _____.

      3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

    * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1)☒ Notice of References Cited (PTO-892)

2)☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)

3)☒ Information Disclosure Statement(s) (PTO/SB/08)
    Paper No(s)/Mail Date *26 June 2008*.

4)☐ Interview Summary (PTO-413)
    Paper No(s)/Mail Date. _____ .

5)☐ Notice of Informal Patent Application

6)☐ Other: _____ .

DETAILED ACTION

Continued Examination Under 37 CFR 1.114

1.   A request for continued examination under 37 CFR 1.114, including the fee set forth in

37 CFR 1.17(e), was filed in this application after final rejection. Since this application is

eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e)

has been timely paid, the finality of the previous Office action has been withdrawn pursuant to

37 CFR 1.114. Applicant's submission filed on 26 June 2008 has been entered.

2.   This communication is in response to the Request for Continued Examination and

amendment filed on 26 June 2008. The Information Disclosure Statement and the Declaration

filed 26 June 2008 have been entered and considered. Claims 1-33 have been canceled. Claims

34-50 have been newly added and remain pending.

Claim Rejections - 35 USC § 112

3.   The following is a quotation of the first paragraph of 35 U.S.C. 112:

> The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

4.   Newly added claims 34-50 are rejected under 35 U.S.C. 112, first paragraph, as

containing subject matter which was not described in the specification in such a way as to

reasonably convey to one skilled in the relevant art that the inventor(s), at the time the

application was filed, had possession of the claimed invention.

(A)   Claims 34, 42, 43 recite limitations that are new matter, and are therefore rejected.

The added material which is not supported by the original disclosure is as follows:

- "wherein some members have no diseases or health-related conditions, some

  members have one disease or health-related condition, and some members have

  multiple diseases or health-related conditions," as disclosed in claims 34, 42 and 43 at

  lines 4-6, respectively;

- "the utilization score for all members of the population is calculated using a single

  predictive equation," as disclosed in claims 34, 42 and 43 at lines 8-9, respectively;

- "irrespective of the members' particular diseases or health-related conditions," as

  disclosed in claims 34, 42 and 43 at lines 12-13, respectively.

35 U.S.C. 132 states that no amendment shall introduce new matter into the disclosure of

the invention. "New matter" constitutes any material which meets the following criteria:

a) It is added to the disclosure (either the specification, the claims, or the drawings) after

the filing date of the application, and

b) It contains new information which is neither included nor implied in the original

version of the disclosure. This includes the addition of physical properties, new uses, etc.

In particular, the Examiner was unable able to find any support for this newly added language within the specification as originally filed on 8 December 2000. Applicant is respectfully requested to clarify the above issues and to specifically point out support for the newly added limitations in the originally filed specification and claims.

(B)   Claims 35-41, 44-50 incorporate the features of independent claims 34, 43 through dependency, and are also rejected.

Applicant is required to cancel the new matter in the reply to this Office Action.

5.   If Applicant continues to prosecute the application, revision of the specification and claims to present the application in proper form is required. <u>While an application can, be amended to make it clearly understandable, no subject matter can be added that was not disclosed in the application as originally filed on 8 December 2000.</u>

6.   The following is a quotation of the second paragraph of 35 U.S.C. 112:

> The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

7.   Claims 34, 42, 43 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

(A)   Claims 34, 42, 43 recite the limitation "the utilization score for all members" in line 8, respectively.

There is insufficient antecedent basis for these limitations in the claim.

Claim Rejections - 35 USC § 102

8.   The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

> A person shall be entitled to a patent unless –
>
> (e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

NOTE: The following rejections assume that the subject matter added in the 26 June 2008 amendment are NOT new matter, and are provided hereinbelow for Applicant's consideration, on the condition that Applicant properly traverses the new matter objections and rejections made in sections 4-5 above in the next communication sent in response to the present Office Action.

9.   Claims 34-50 are rejected under 35 U.S.C. 102(e) as being anticipated by LASH (2001/0020229 A1).

(A)   As per newly added claim 34, LASH teaches a computer-implemented method for targeting one or more high-risk members of a population for proactive care management, comprising a computer system performing the following:

storing health-related data for each member of a population, wherein some members have no diseases or health-related conditions, some members have one disease or health-related condition, and some members have multiple diseases or health-related conditions (Lash; Table 2, paragraphs [0007], [0010], [0036]-[0038], [0049]-[0050], [0053]-[0054], [0057], [0059]); Examiner interprets Lash's teachings of "determining the likelihood that an asthmatic patient will become a high use patient to the MCO. In this application, many different claims variables and encounter data (e.g., an ER visit) are available for potential use in the model. Such potential variables may include, among others, [...] ... the presence or absence of a respiratory infection diagnosis (CMINFEC2); the presence or absence of another respiratory related (comorbid) diagnosis (CNIRSPIR2)" ; the presence or absence of hypertrophied nasal turbinate diagnosis (CMNAST2); and the presence or absence of respiratory complication diagnosis (CONDLIC). Of course, other claims data and encounter information can also be stored and used in the patient database" (Lash; paragraph [0049]) to teach a form of this limitation;

storing a predicted future healthcare utilization score for each member of the population (Lash; paragraphs [0041]-[0042]), wherein the utilization score for all members of the population is calculated using a single predictive equation (Lash; paragraphs [0007], [0036], [0048], [0055], page 8, claims 8, 12, 17); (Examiner interprets Lash's teachings of "executable by the processor to perform regression analysis to create a probability equation and to execute the

probability equation using data from the patient claims database to compute the probabilities of

the patients being a high-cost patient" (Lash; paragraph [0036]) together with Lash's teachings

of "the patient having a score indicating an above average probability that the patient will incur

high use" (Lash; page 8, claim 8) to teach a form of calculating an average for all members

against which to compare a member's score by using a "utilization score for all members of the

population [which] is calculated using a single predictive equation"),

wherein the utilization score for each member is calculated based upon the presence or

absence of diseases and health-related conditions in the health-related data stored for the

member, (Examiner interprets Lash's teachings of "P is the probability that a given patient will

become a high-use patient, e is a constant which is the base of natural logarithms, and logit is the

sum of (i) a predetermined constant and (ii) each of the high relevance claims variables

multiplied by its respective coefficient. The coefficients are preferably logistic regression

coefficients. The present invention is desirably used to predict which patients of various types,

e.g., asthmatic or diabetic patients, will become heavy users of medical services. In such a case,

the high relevance claims variables may comprise variables representing, for instance, the

number of emergency room ("ER") visits by the patient in the past year, whether the patient has

been diagnosed in the past as having a certain symptom of a disease or condition (e.g., allergies)

and whether the patient has suffered any related complications in the past year" (Lash;

paragraphs [0009]-[0010]) to teach a form of this limitation); and wherein the utilization scores

for the members are calculated to enable identification of one or more high-risk members of the

population irrespective of the members' particular diseases or health-related conditions (Lash;

paragraphs [0011]-[0012], [0022], [0043]); Examiner interprets Lash's teachings of "a way of determining which type of intervention is most appropriate to them involves the addition socio/demographic information to the claims data on this group of patients … [...] … In particular, the patient's social security number or a zip code may be used to access commercial databases from which information about the patient can be retrieved" (Lash; paragraph [0043]) to teach a form of "irrespective of the members' particular diseases or health-related conditions;"

storing a plurality of risk factors, top medical episodes, or intervention flags, wherein the risk factors or intervention flags are defined to enable identification of member attributes amenable to intervention irrespective of the member's particular diseases or health-related conditions (Lash; Figure 4, paragraphs [0022], [0041] - [0042]); Examiner interprets Lash's teachings of "[t]hose patients with a score above a certain level, for example 90%, can be isolated for direct intervention … [...] …. The process by which this is accomplished is illustrated in FIG. 4. In particular, in step 80, those patients with a score above a predetermined level [reads on "storing risk factors or intervention flags"], for example 90 are selected out" (Lash; paragraph [0041]) and Lash's teachings of "[b]y identifying a group of patients with a high probability of admission, scarce resources can be directed to those patients at the highest risk. Interventions designed to improve health and decrease the patient's risk can then be directed at these very high risk patients" (Lash; paragraph [0042]) to teach a form of "defined to enable identification of member attributes amenable to intervention irrespective of the member's particular diseases or health-related conditions;"

identifying one or more high-risk members having a utilization score that exceeds a

threshold value (LASH; paragraphs [0011]-[0012], [0055]);

compiling a "subset" (reads on "data set") including the health-related data stored for

each high-risk member (Lash; Table 2, paragraphs [0007], [0022], [0049]-[0050], [0053]-[0054],

[0057], [0059]), wherein one or more of the stored intervention flags, risk factors or top medical

episodes may be assigned to each high-risk member based upon the high-risk member's health-

related data (Lash; paragraphs [0040]-[0042], [0049]);

selecting from the group of high-risk members one or more intervention members based

upon the intervention flags, risk factors or top medical episodes assigned to each high-risk

member (LASH; Figures 2, 3, 3A, 3B,4, paragraphs [0007], [0010], [0021]-[0022], [0025],

[0037], [0041]- [0042]) Examiner interprets Lash's teachings of "[t]hose patients with a score

above a certain level, for example 90%, can be isolated for direct intervention … […] … . The

process by which this is accomplished is illustrated in FIG. 4. In particular, in step 80, those

patients with a score above a predetermined level [reads on "based upon the intervention flags"],

for example 90 are selected out" (Lash; paragraph [0041]) together with Lash's teachings of

"[b]y identifying a group of patients with a high probability of admission, scarce resources can

be directed to those patients at the highest risk. Interventions designed to improve health and

decrease the patient's risk can then be directed at these very high risk patients" (Lash; paragraph

[0042]) to teach a form of "selecting from the group of high-risk members one or more

intervention members based upon the intervention flags, risk factors or top medical episodes;"

and

transferring an output file to a computer program (reads on "an intervention application")

including each intervention member, the health-related data stored for each intervention member,

and the intervention flags, risk factors, or top medical episodes associated with each intervention

member (Lash; paragraphs [0007], [0034]-[0036], claim 21); Examiner interprets Lash's

teachings of "the probability equation representing the model can then be loaded [reads on

"transferred"] onto another computer, for example a personal computer ... [...] ... The program

then sorts this data, for example, according to the disease indicated by particular patient records

(step 65A). Then the program applies the probability equation to patient records indicating the

particular disease for which the model was created (step 66A). The result is a patient score (step

67A) which ranges from 0 to 100 and indicates the probability that the patient will be high-cost"

(Lash; paragraph [0048]) together with Lash's teachings of "[t]he model is then used with the

preselected subset 20 of claims data 10 that are relevant to the predictions for each patient. The

resultant probabilities for each patient are computed by the computer are then provided to output

52" (Lash; paragraph [0036]) to teach a form of this limitation.

    (B)   As per newly added claims 35-41, LASH discloses a method as analyzed and

discussed in claim 34 above,

    wherein the threshold value is either a numerical value or a rank (LASH; paragraphs

[0011]-[0012], [0041], [0055]);

    wherein the utilization score for one or more members is converted to a relative risk ratio

that indicates the member's health-related risk relative to all members of the population (Lash;

Abstract, paragraphs [0007]-[0012], [0021]- [0022], [0041]); Examiner interprets Lash's

teachings of "[t] he stored program analyzes the subset of claims data according to a probability

equation created by the regression analysis, which equation is based at least in part on the sum of

each of the high relevance claims variables multiplied by corresponding weighing coefficients.

The stored program computes probability values for each patient which are indicative of the

likelihood that the patient will acquire high service utilization characteristics. For instance, such

high service use characteristics can include the patient suffering one or more high-cost medical

events or episodes, or the patient becoming a high user of services overall relative to other

patients" (Lash; paragraph [0007]) to teach a form of "wherein the utilization score for one or

more members is converted to a relative risk ratio that indicates the member's health-related risk

relative to all members of the population;"

wherein the risk factors that may be identified for each member of the intervention group

include mental health diagnoses, self-care characteristics, equipment/monitors, and drug history

(LASH, paragraphs [0022], [0040], [0042], [0049]);

wherein the intervention flags that may be identified for each member of the intervention

group include emergency room visits, hospital admissions, out- of-network costs, multiple

provider specialties, multiple prescriptions, no appropriate provider for a medical episode,

missing aspects of care, and non-compliance with prescriptions (LASH; paragraphs [0010],

[0023]-[0024], [0040], [0049]-[0050]);

wherein the intervention members are selected based upon the number of intervention

flags identified for each member (LASH; Figures 2, 3, 3A, 4, Abstract, paragraphs [0007],

[0012], [0025], [0037], [0041]- [0042]); Examiner interprets Lash's teachings of "[t]hose

patients with a score above a certain level, for example 90%, can be isolated for direct

intervention ... [...] ... . The process by which this is accomplished is illustrated in FIG. 4. In

particular, in step 80, those patients with a score above a predetermined level, for example 90 are

selected out" (Lash; paragraph [0041]) and Lash's teachings of "[b]y identifying a group of

patients with a high probability of admission, scarce resources can be directed to those patients at

the highest risk. Interventions designed to improve health and decrease the patient's risk can

then be directed at these very high risk patients" (Lash; paragraph [0042]) to teach a form of

"wherein the intervention members are selected based upon the number of intervention flags

identified for each member;"

wherein each member's predicted future healthcare utilization score is a relative risk

ranking representing the quotient of the member's predicted future healthcare utilization divided

by an average predicted future healthcare utilization score for the population (LASH; paragraphs

[0007], [0055], [0048], page 8, claims 8, 12, 17); Examiner interprets Lashes teachings of

"probability values for each patient which are indicative of the likelihood that the patient will

acquire high service utilization characteristics. For instance, such high service use characteristics

can include the patient suffering one or more high-cost medical events or episodes, or the patient

becoming a high user of services overall relative to other patients" (Lash; paragraph [0007]) and

of comparing a score with a threshold for each of the members (LASH; paragraph [0055]) and of

calculating average probabilities and applying a probability equation to each patient record

(LASH; claim 12) as teaching a form of "a relative risk ranking representing the quotient of the

member's predicted future healthcare utilization divided by an average predicted future

healthcare utilization score for the population;" and

wherein the top medical episodes are identified by assigning a ranking to each of the

plurality of medical episodes present in the health-related data of the population (LASH,

Abstract, paragraphs [0022]-[0023], [0037]-[0041], [0048], [0054], [0057], [0059], Table 2)

based on a combination of actual associated cost for the member and an average reference point

or benchmark cost for the medical "event" (reads on "episode") (LASH, paragraphs [0007],

[0021]-[0023], [0037], [0041]), Table 2); Examiner interprets Lash's teachings of "[f]or instance,

such high service use characteristics can include the patient suffering one or more high-cost

medical events or episodes, or the patient becoming a high user of services overall relative to

other patients" (emphasis added) (LASH, paragraphs [0007]), and Lash's teachings of

comparing patient claims variables with a "predetermined threshold significance value" (reads

on "benchmark") to create a predictive model (Lash; paragraph [0011]) together with Lash's

teachings of "[t]he scores which were assigned to patient records based on the model can be

scaled to run from 0 to 100, with the higher number meaning a greater probability that the patient

will become high-cost. Those patients with a score above a certain level [reads on

"benchmark"], for example 90%, can be isolated for direct intervention by the MCO. The

process by which this is accomplished is illustrated in FIG. 4. In particular, in step 80, those

patients with a score above a predetermined level, for example 90 are selected out" (LASH,

paragraph [0041]) to teach a form of "based on a combination of actual associated cost for the

member and an average reference point or benchmark cost for the medical episode."

(C)   As per newly added claim 42, LASH discloses a computer-implemented method

for targeting one or more high-risk members of a population for proactive care management,

comprising a computer system performing the following:

storing health-related data for each member of a population, wherein some members have

no diseases or health-related conditions, some members have one disease or health-related

condition, and some members have multiple diseases or health-related conditions   (Lash; Table

2, paragraphs [0007], [0010], [0036]-[0038], [0049]-[0050], [0053]-[0054], [0057], [0059]);

Examiner interprets Lash's teachings of "determining the likelihood that an asthmatic patient

will become a high use patient to the MCO. In this application, many different claims variables

and encounter data (e.g., an ER visit) are available for potential use in the model. Such potential

variables may include, among others, [...] ... the presence or absence of a respiratory infection

diagnosis (CMINFEC2); the presence or absence of another respiratory related (comorbid)

diagnosis (CNIRSPIR2)" ; the presence or absence of hypertrophied nasal turbinate diagnosis

(CMNAST2); and the presence or absence of respiratory complication diagnosis (CONDLIC).

Of course, other claims data and encounter information can also be stored and used in the patient

database" (Lash; paragraph [0049]) to teach a form of this limitation;;

storing a predicted future healthcare utilization score for each member of the population

(Lash; paragraphs [0041]-[0042]), wherein the utilization score for all members of the population

is calculated using a single predictive equation (Lash; paragraphs [0007], [0036], [0048], [0055],

page 8, claims 8, 12, 17); (Examiner interprets Lash's teachings of "executable by the processor

to perform regression analysis to create a probability equation and to execute the probability

equation using data from the patient claims database to compute the probabilities of the patients

being a high-cost patient" (Lash; paragraph [0036]) together with Lash's teachings of "the

patient having a score indicating an above average probability that the patient will incur high

use" (Lash; page 8, claim 8) to teach a form of calculating an average for all members against

which to compare a member's score by using a "utilization score for all members of the

population [which] is calculated using a single predictive equation"), wherein the utilization

score for each member is calculated based upon the presence or absence of diseases and health-

related conditions in the health-related data stored for the member (Examiner interprets Lash's

teachings of "P is the probability that a given patient will become a high-use patient, e is a

constant which is the base of natural logarithms, and logit is the sum of (i) a predetermined

constant and (ii) each of the high relevance claims variables multiplied by its respective

coefficient. The coefficients are preferably logistic regression coefficients. The present

invention is desirably used to predict which patients of various types, e.g., asthmatic or diabetic

patients, will become heavy users of medical services. In such a case, the high relevance claims

variables may comprise variables representing, for instance, the number of emergency room

("ER") visits by the patient in the past year, whether the patient has been diagnosed in the past as

having a certain symptom of a disease or condition (e.g., allergies) and whether the patient has

suffered any related complications in the past year" (Lash; paragraphs [0009]-[0010]) to teach a

form of this limitation), and wherein the utilization scores for the members are calculated to

enable identification of one or more high-risk members of the population irrespective of the

members' particular diseases or health-related conditions (Lash; paragraphs [0011]-[0012],

[0022], [0043]); Examiner interprets Lash's teachings of "a way of determining which type of intervention is most appropriate to them involves the addition socio/demographic information to the claims data on this group of patients ... [...] ... In particular, the patient's social security number or a zip code may be used to access commercial databases from which information about the patient can be retrieved" (Lash; paragraph [0043]) to teach a form of "irrespective of the members' particular diseases or health-related conditions;"

storing a plurality of risk factors, top medical episodes, or intervention flags, wherein the risk factors or intervention flags are defined to enable identification of member attributes amenable to intervention irrespective of the member's particular diseases or health-related conditions (Lash; Figure 4, paragraphs [0022], [0041] - [0042]); Examiner interprets Lash's teachings of "[t]hose patients with a score above a certain level, for example 90%, can be isolated for direct intervention ... [...] .... The process by which this is accomplished is illustrated in FIG. 4. In particular, in step 80, those patients with a score above a predetermined level [reads on "storing risk factors or intervention flags"], for example 90 are selected out" (Lash; paragraph [0041]) and Lash's teachings of "[b]y identifying a group of patients with a high probability of admission, scarce resources can be directed to those patients at the highest risk. Interventions designed to improve health and decrease the patient's risk can then be directed at these very high risk patients" (Lash; paragraph [0042]) to teach a form of "defined to enable identification of member attributes amenable to intervention irrespective of the member's particular diseases or health-related conditions;"

compiling a "subset" (reads on "data set") including the health-related data stored for

each member (Lash; Table 2, paragraphs [0007], [0022], [0049]-[0050], [0053]-[0054], [0057],

[0059]), wherein one or more of the stored intervention flags, risk factors or top medical

episodes may be assigned to each member based upon the member's health-related data (Lash;

paragraphs [0040]-[0042], [0049]);

identifying one or more high-risk members having a utilization score that exceeds a

threshold value (LASH; paragraphs [0011]-[0012], [0055]);

selecting from the group of high-risk members one or more intervention members based

upon the intervention flags, risk factors or top medical episodes assigned to each high-risk

member (LASH; Figures 2, 3, 3A, 3B,4, paragraphs [0007], [0010], [0021]-[0022], [0025],

[0037], [0041]- [0042]) Examiner interprets Lash's teachings of "[t]hose patients with a score

above a certain level, for example 90%, can be isolated for direct intervention … [...] … . The

process by which this is accomplished is illustrated in FIG. 4. In particular, in step 80, those

patients with a score above a predetermined level [reads on "based upon the intervention flags"],

for example 90 are selected out" (Lash; paragraph [0041]) together with Lash's teachings of

"[b]y identifying a group of patients with a high probability of admission, scarce resources can

be directed to those patients at the highest risk. Interventions designed to improve health and

decrease the patient's risk can then be directed at these very high risk patients" (Lash; paragraph

[0042]) to teach a form of "selecting from the group of high-risk members one or more

intervention members based upon the intervention flags, risk factors or top medical episodes;"

and

transferring an output file to a computer program (reads on "an intervention application")

including each intervention member, the health-related data stored for each intervention member,

and the intervention flags, risk factors, or top medical episodes associated with each intervention

member (Lash; paragraphs [0007], [0034]-[0036], claim 21); Examiner interprets Lash's

teachings of "the probability equation representing the model can then be loaded [reads on

"transferred"] onto another computer, for example a personal computer … [...] ... The program

then sorts this data, for example, according to the disease indicated by particular patient records

(step 65A). Then the program applies the probability equation to patient records indicating the

particular disease for which the model was created (step 66A). The result is a patient score (step

67A) which ranges from 0 to 100 and indicates the probability that the patient will be high-cost"

(Lash; paragraph [0048]) together with Lash's teachings of "[t]he model is then used with the

preselected subset 20 of claims data 10 that are relevant to the predictions for each patient. The

resultant probabilities for each patient are computed by the computer are then provided to output

52" (Lash; paragraph [0036]) to teach a form of this limitation.

(D)   Claim 43 differs from method claim 34, in that it is a system rather than a method

for targeting one or more high-risk members of a population for proactive care management.

System claims 43-50 repeat the subject matter of claims 34-41, respectively, as a set of

elements rather than a series of steps. As the underlying processes of claims 34-41 have been

shown to be fully disclosed by the teachings of LASH in the above rejection of claims 34-41, it

is readily apparent that the system disclosed by LASH includes the apparatus to perform these

functions. As such, these limitations are rejected for the same reasons given above for method claims 34-41, and incorporated herein.

Response to Arguments

10.   Applicant's arguments filed 26 June 2008 have been fully considered but they are not persuasive. Applicant's arguments will be addressed hereinbelow in the order in which they appear in the response filed 26 June 2008.

(A) Applicant's arguments on pages 8-9 in the response filed 26 June 2008 with respect to newly added claims 34-50 have been considered but are moot in view of the new ground(s) of rejection.

(B)   At page 9, paragraph 1 in the response filed 26 June 2008 Applicant refers to the declaration of Gerald L. Lutgen, submitted 26 June 2008. As per the "Declaration under 37 C.F. R. § 1.132," filed 26 June 2008, Examiner respectfully thanks Mr. Lutgen for this explanation of Applicant's invention. Examiner has considered this opinion evidence, however, and notes that the function of a declaration under 37 C.F. R. § 1.132 is to overcome obviousness rejections under 35 USC § 103, however in the instant Office Action it is 35 USC § 102 that has been applied to reject claims 34-50.

For the above reasons, the declaration of Gerald L. Lutgen under 37 C.F.R. § 1.132, submitted 26 June 2008, is inappropriate to overcome the grounds of rejection of claims 34-50.

Conclusion

11.   The prior art made of record and not relied upon is considered pertinent to Applicant's

disclosure. The cited but not applied references Torma, et al., U.S Patent Number 5365425,

Potter, et al., U.S Patent Application Publication Number 2002/0111826, and Voss, et al., U.S

Patent Application Publication Number 2004/0049408 teach the environment of identifying

high-risk patients.

12.   Any response to this action should be mailed to:

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For informal or draft communications, please label

"PROPOSED" or "DRAFT" on the front page of the

communication and do NOT sign the communication.

After Final communications should be labeled "Box AF."

13.   Any inquiry concerning this communication or earlier communications from the

examiner should be directed to Natalie A. Pass whose telephone number is (571) 272-6774. The

examiner can normally be reached on Monday through Thursday from 9:00 AM to 6:30 PM. The

examiner can also be reached on alternate Fridays.

14.   If attempts to reach the examiner by telephone are unsuccessful, the examiner's

supervisor, Jerry O'Connor can be reached on (571) 272-6787. The fax phone number for the

organization where this application or proceeding is assigned is (571) 273-8300.

15.   Information regarding the status of an application may be obtained from the Patent

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/N. A. P./

Examiner, Art Unit 3626

August 27, 2008

/Gerald J. O'Connor/
Supervisory Patent Examiner
Group Art Unit 3626